

EXHIBIT 28

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DARRYL CHALMERS, DARREN CONNORS,
GLENN MENDEZ, JAMES NOVA, and
FATIMA Q. ROSEMOND,

1:20-cv-03389-AT

On behalf of themselves and all
others similarly situated, and
AFSCME DISTRICT COUNCIL 37
LOCAL 2507, on behalf of its
Members

Plaintiffs,

v.

CITY OF NEW YORK,

Defendant.

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April 19, 2021
9:15 a.m.

DEPOSITION of CITY OF NEW YORK, the
Defendant herein, by STEPHEN RUSH, taken by the
attorneys for the Plaintiffs, pursuant to Notice,
held via Web conference at the above date and
time, before Maureen McCormick, a Notary Public of
the State of New York.

1 S. Rush

2 City of New York, salaries, overtime, shift
3 differentials, things of that nature, holiday pay.

4 So that is the largest part of the
5 Fire Department's budget.

6 Q. Among other things, did the budget
7 unit under Mr. Novello monitor the spending on
8 personnel in all of the Fire Department's bureaus
9 and offices?

10 A. Yes, it did.

11 Q. Did it also work with the bureau's and
12 offices on their new salary needs for the upcoming
13 fiscal year?

14 A. Their new staffing needs might be more
15 a better way of saying it.

16 Each year, we would have a chance to
17 review with OMB, the Office of Management &
18 Budget, any particular new needs we might have,
19 and budget services under Fred Novello worked on
20 that.

21 Q. Did you ultimately need to get the
22 approval of the Office of Management & Budget for
23 meeting these staffing needs?

24 A. Yes.

25 Q. If a bureau thought that it had some

1 S. Rush

2 new needs, including hiring replacement personnel,
3 did it need to get approval from the budget office
4 before it could actually hire someone?

5 A. So obviously on approving personnel,
6 replacing vacancies, there would be a two-step
7 process where we would first go to budget services
8 to request the filling of the vacancy, and from
9 there, once the budget services approved it,
10 assuming they approved it, it would go to human
11 resources for the actual posting and recruitment.

12 Q. And what about if they wanted to add
13 personnel? What is the process?

14 A. If we were supplementing our existing
15 budget with a new head count, that would require
16 OMB approval first.

17 Q. But before it got to OMB ultimately,
18 you would be the one who would have to approve it
19 and approve making the request to OMB?

20 A. I would make the final recommendation
21 to the commissioner's office to submit whatever
22 additional needs needed to go to OMB.

23 Q. Is it correct that one of the bureaus
24 in the Fire Department is the Bureau of Fire
25 Prevention?

1 S. Rush

2 Q. And in your response to him, you say,
3 "If that title is HTR." By HTR, do you mean hard
4 to recruit?

5 A. Yes.

6 Q. And was it your understanding that Mr.
7 Novello was also referring to a hard to recruit
8 status?

9 A. Yes, I think he was.

10 Q. And what did he mean by or what did
11 you understand he meant by hard to fill, and what
12 did you mean by HTR or hard to recruit?

13 A. Now, obviously this is 17 years ago,
14 so my memory may fail me here, but I believe in
15 negotiating this 15 percent freeze, if a title
16 could be considered hard to recruit, they might be
17 able to skip the freeze.

18 I can't recall for sure, but that
19 might have been what the point of his email was.

20 Q. At this time, was it your
21 understanding that the Bureau of Fire Prevention
22 frequently had difficulty filling all their slots
23 for fire protection inspectors?

24 A. Periodically fire prevention did have
25 issues recruiting, yes.

1 S. Rush

2 9:04.

3 A. Okay.

4 Q. You'll see that he starts out that
5 email, "Like that really helped with hard to fill
6 titles like FPIs." Do you see that?

7 A. Yes.

8 Q. And it's your understanding that he
9 was again referring to FPIs as a hard to fill
10 title?

11 A. He was calling it a hard to fill
12 title, yes.

13 Q. And he then goes on to say, "OLR still
14 cut their starting pay."

15 What is the reference to OLR, if you
16 know?

17 A. Office of Labor Relations.

18 Q. And what is the Office of Labor
19 Relations?

20 A. They are the city's contract
21 negotiator. They are sort of -- they're the
22 union -- they work with the labor side on
23 contracts, grievances, things of that nature, so
24 they're the city's representative to labor unions
25 in the city.

1 S. Rush

2 Q. Then he goes on to say, "I think you
3 can always find candidates with low salaries, but
4 are they the 'best' candidates or does the city
5 readjust its hiring standards to meet the
6 population at large?"

7 Do you see that?

8 A. Yes.

9 Q. Now, we're going to be going on and
10 seeing later emails in which you and Mr. Novello
11 question the salary levels for fire protection
12 inspectors.

13 Do you have a memory, or either jogged
14 by what you've seen so far or your own independent
15 memories, whether in 2005 you thought that the
16 salaries of fire protection inspectors were too
17 low to get good candidates?

18 A. I can't speak to whether, you know,
19 the candidates, you know, being good or bad, but
20 again, we did have trouble at times recruiting in
21 fire prevention.

22 Whether that was due to the salary,
23 perhaps. You know, that's one of my thoughts
24 always. You look at how salary works, but how
25 well we were recruiting, as well, because we

1 S. Rush

2 didn't spend a lot of time on recruitment. A
3 civil service test might be given, and that would
4 result in candidates taking the test, but, you
5 know, how well we recruited to try to fill those
6 jobs and get people to take the tests, we weren't
7 doing a good job of that either.

8 So obviously a lot of factors going
9 into it, of which salary in my mind would always
10 play a part.

11 Q. And do you remember that in 2005 you
12 thought that salary might play a part in the
13 difficulties you faced in recruiting for the fire
14 protection inspector position?

15 A. Yeah, I mean, you know, issues pop up
16 on our radar from time to time, especially if we
17 had vacancies in fire prevention and inspector
18 titles that we were trying to fill, and then we'
19 have discussions on this on trying to address
20 that, but so -- you know, ultimately when the city
21 froze the starting pay, it became difficult for a
22 number of agencies, including the Police
23 Department, on recruiting personnel with the lower
24 salaries, so obviously salary -- salary levels can
25 play a part in the issue.

1 S. Rush

2 It may not be the sole part, but they
3 can play a part.

4 Q. Let's move up to your response of
5 9:21, and your first point is, "We never requested
6 FPI be exempt." Do you see that?

7 So what would have been the process,
8 to the best of your knowledge, under which the
9 agency, the Fire Department, would have requested
10 the fire protection inspectors to be exempt from
11 the freeze?

12 A. You know, I don't recall, but, you
13 know, reading above, I assume Fred was saying
14 that, you know, we could speak to labor relations
15 about requesting that, and at the time, my
16 recollection is that we did not request them to be
17 exempt.

18 When I say exempt, exempt from the
19 frozen salary of 15 percent lower for the first
20 two years, and then you graduate to that higher
21 salary anyway, but I assume that's what I was
22 saying on Point No. 1.

23 Q. When you say looking above, you are
24 referring to Fred Novello's email where he says,
25 "I thought you did bring up the FPI salary issue,

1 S. Rush

2 little bit later.

3 A. Okay.

4 Q. Let's start with the earliest email in
5 the chain, which is yours to Donay Queenan and
6 John Benanti of May 9 at 9:44.

7 A. Okay.

8 Q. Donay Queenan was at the time the head
9 of personnel or HR; is that right?

10 A. Correct.

11 Q. And throughout the period from 2004
12 until early 2019 when she retired, that was her
13 position?

14 A. Yes.

15 Q. What position did John Benanti have at
16 that time, 2014?

17 A. John was deputy commissioner, and
18 Donay reported to him.

19 Q. And you see that you say, "BTW, the
20 new FPI list only has 57 candidates, and CID will
21 probably disqualify a sizeable number."

22 What do you mean by CID will probably
23 disqualify a sizeable number?

24 A. The Candidate Investigation Division
25 is the one that screens new applicants to make

1 S. Rush

2 sure they meet the requirements for the job, they
3 had the qualifications, whatever those
4 qualifications might be as established by DCAS and
5 FDNY, and we -- the experience was that a lot of
6 times you have a list of candidates, and you might
7 have 57, you might wind up with only you being
8 able to use half of that because of the
9 disqualifications.

10 Q. And -- sorry, were you not finished?

11 A. That was just disqualifications due to
12 not meeting the qualifications required. Sorry.

13 Q. And do you understand that from the
14 language of your email that you were concerned
15 that there were not going to be sufficient FPIs
16 hired to meet the needs of the Bureau of Fire
17 Prevention?

18 A. I was certainly concerned.

19 Q. And you go on to say, "Perhaps it's
20 time to petition Labor Relations/DCAS to offer
21 alternatives to the current practice of appointing
22 FPIs." Do you see that?

23 A. Yes.

24 Q. What role would DCAS have in the
25 practices of appointing FPIs?

1 S. Rush

2 resources, we decided we should also put an
3 increased focus on other areas of the department
4 where we have titles that we need to fill, and
5 that would include fire protection inspectors, so
6 I think there was an increased, enhanced effort in
7 this regard post -- you know, in the second half
8 of the 2010s.

9 Q. And then the last sentence is -- maybe
10 not last sentence, last question, "Maybe we should
11 argue that the low FPI salaries are an impediment
12 to hiring?" Do you see that?

13 A. Yes.

14 Q. Do you know, was this the first time
15 that you had raised to human resources and to Mr.
16 Benanti the possibility that fire protection
17 inspector salaries were too low?

18 A. I don't know if this was the first
19 time. Obviously, this was the discussion that
20 would come up periodically if we couldn't fill the
21 ranks, the salary.

22 You know, obviously, I spoke to two
23 other issues that could be at play, standards and
24 recruitment methods, but, you know, I would always
25 throw in there are the salaries competitive, so

1 S. Rush

2 that we can recruit, and that, you know -- I don't
3 know if I have had that discussion with Donay
4 prior to this.

5 I can't be sure. Probably, but, you
6 know, I don't remember for sure.

7 Q. When you say Donay, that would be
8 Donay Queenan?

9 A. Yes. Sorry. The assistant
10 commissioner for human resources, Donay Queenan.

11 Q. And then you say, "If so, should we
12 position OLR/DCAS to establish levels in the FPI
13 title similar to the AFPI title?"

14 What do you mean by levels?

15 A. The AFPI title, which is the associate
16 fire protection inspector, has three levels, Level
17 1, Level 2, Level 3, and I was saying maybe we
18 needed to have an FPI level 1, Level 2, Level 3,
19 you know, so it would give them an opportunity to
20 advance.

21 Normally, you know, these things would
22 really play out in contract negotiations, which
23 labor relations is mainly the top player.
24 Sometimes it can happen outside the negotiations,
25 but largely it happens as part of contract

1 S. Rush

2 negotiations.

3 Q. And with the opportunity to advance
4 from, let's say, Level 1 to Level 2 and then from
5 Level 2 to Level 3, there would also be, in your
6 mind, increases in pay; is that correct?

7 A. Yes, sort of like a step plan, so that
8 you would see your salary grow.

9 I mean, the way it was set up was that
10 you come in at the hiring rate, and your salary
11 would grow after two years by 15 percent, but
12 there were -- we were challenged at times on
13 filling the positions, so that's why I was raising
14 this among potential solutions.

15 Yes, there could have been a variety
16 of solutions to this problem. That was just one
17 that I raised among three.

18 Q. You say challenged at times in filling
19 the position.

20 Do you recall, were there times during
21 the period from 2004 and '5 that we looked at
22 earlier and 2014 when the Fire Department was not
23 finding it difficult to fill the position?

24 A. I have to believe that was the case,
25 because if this was going on all the time, and we

1 S. Rush

2 For the record, who was Steven
3 Ertrachter?

4 A. Steven Ertrachter worked in the Bureau
5 of Fire Prevention. He served as their human
6 resources liaison at the time, although he had
7 primary responsibility for running certificates of
8 fitness unit, which basically tested and gave out
9 certificates for members of the public who were
10 required to do certain Fire Code enforcement
11 duties, and they would need a certificate of
12 fitness for various things under the Fire Code,
13 but he -- in this role, he served as the human
14 resources liaison for fire prevention.

15 Q. And what type of position did Joseph
16 Zavaglia have in 2014?

17 A. He was one of Fred Novello's deputy
18 directors.

19 Q. And you'll see that Mr. Novello says,
20 "I brought up the FPI starting salary issue up to
21 Steve, and while he supports it, and so do I, we
22 cannot approve until I receive feedback from David
23 Zweilfer." I think there is a misspelling here.
24 I think it's Zweitler.

25 A. That's correct, Zweitler.

1 S. Rush

2 Q. And do you remember having a
3 conversation around this time with Fred Novello
4 about fire protection inspectors starting
5 salaries?

6 A. I only remember by looking at these
7 emails. I don't remember otherwise, honestly.

8 Q. Do you remember having discussions
9 about starting salary where there was something
10 that you might approve an adjustment in starting
11 salaries if you got positive feedback from David
12 Zweitler?

13 A. No. I don't recall this, honestly. I
14 do know -- I'm trying to figure from here, but
15 actually, no. I don't know what David would have
16 been able to do. I know from some of the other
17 emails, which I guess we can wait till we get to,
18 we can talk about those other emails, but Fred was
19 suggesting at one point -- and you can see it in
20 here -- hiring above the minimum rate, but he
21 realized that wouldn't work, because it would
22 create other labor relations issues, so we
23 abandoned that thought, so...

24 Q. So Zweitler was the head of Fire
25 Department's OLR; is that right? Or not OLR, Fire

1 S. Rush

2 Department's labor section management.

3 A. Yes, David Zweitler was the director
4 of the FDNY Office of Labor Relations.

5 Q. And the idea that Mr. Novello was
6 expressing was increasing the salaries for, not
7 just the entry-level FPIs, but also incumbent
8 FPIs; is that right?

9 A. I don't -- I don't know that's what
10 he's saying. I thought it was more along the
11 lines of how do we do something for the starting
12 pay to let FPIs in.

13 We were in contract negotiations,
14 which were -- so raising it under the umbrella of
15 contract negotiations would be something to talk
16 about.

17 Q. Now, at least when you were talking
18 about Fred Novello, you weren't talking about just
19 raising the rates for entry-level FPIs, with
20 certain characteristics. You were talking about
21 raising up for all entry-level FPIs; is that
22 right?

23 A. We would discuss different methods,
24 you know. We talked about hiring above the
25 minimum, and I think that was dismissed, and we

1 S. Rush

2 talked about proposing a step plan for fire
3 protection inspectors, and that would require
4 labor relations consent and bargaining with the
5 unions, so we talked about different things on
6 trying to address what we thought was potentially
7 a roadblock to recruitment of hiring new
8 inspectors so...

9 Q. But each of these ideas -- whether it
10 was hiring above minimum or step pay -- would
11 apply to all of the FPIs, not just people in a
12 particular subunit or people with more years or
13 less years of experience.

14 It was across the board changes that
15 you were speaking about; is that right?

16 A. Yes, for the title of fire protection
17 inspector.

18 Q. And I believe you said in one of your
19 earlier answers that it was decided that you or
20 the department couldn't hire at above minimum
21 levels, negotiated levels; is that right?

22 MS. CROUSHORE: Objection.

23 A. That's correct.

24 Q. And why was that?

25 What's the basis for saying that the

1 S. Rush

2 because there's a higher cost factor going on
3 here.

4 This really becomes the province of
5 contract negotiations, and I think around this
6 period of time probably contract negotiations were
7 underway between the city and EMS, which
8 represented the fire protection inspectors and
9 still represents them.

10 Q. Let's return to Exhibit 9 and move up
11 to Mr. Novello's later email from September 18 at
12 3:04, and he says, "Why not use this opportunity
13 to see if OLR will support raising the FPI
14 starting salaries and the implementation of
15 different levels like associate FPIs?"

16 Do you know whether there was outreach
17 at this point to OLR to see if it would do -- give
18 that type of support?

19 A. I think the issues were raised as part
20 of negotiations. There were several things raised
21 in that round of bargaining, a 40-hour work week,
22 for example, since they were 35-hour employees.
23 That was raised, and ultimately the contract
24 mechanism how the raise they received were
25 negotiated between the parties.

1 S. Rush

2 Q. To your understanding in the
3 negotiations, did OLR support the raising of FPIs'
4 starting salaries and the implementation of
5 different --

6 MS. CROUSHORE: Objection.

7 Q. -- levels?

8 A. I don't recall OLR's position on the
9 particular matter of levels.

10 I do know we did have discussions
11 about the pay for fire protection inspectors. I
12 know the Fire Department did raise the issue. I
13 think the commissioner was even interested in the
14 issue, but I'm not being -- there was no setting
15 up of levels for fire protection inspectors in
16 that round of bargaining.

17 I think they did ultimately receive an
18 increase due to increased work week that went from
19 35 hours, 37 and a half hours, and they received
20 some other items, but the city negotiates under
21 pattern bargaining, meaning the pattern they set
22 for one union is how they negotiate raises for all
23 of the other unions, and to receive raises above
24 that pattern, you'd have to negotiate givebacks,
25 so to speak, and ultimately how -- I don't

1 S. Rush

2 remember all the terms of the contract, but there
3 were certain compensation increases outside of
4 salary that the fire protection inspectors
5 bargained for in that round of bargaining,
6 including a 7 percent increase in pay due to a
7 longer work week.

8 MR. LIEDER: Could we next turn to
9 Exhibit 4, please.

10 Q. Mr. Rush, this is a series of emails,
11 but I'm only going to ask you about the last --
12 the most recent one, the one on the top, which is
13 your email of September 19, 2014, at 12:26:56 to
14 Joseph Bird with a copy to Fred Novello.

15 A. Just the first email?

16 Q. Yes.

17 A. Okay.

18 Q. First, who is Joseph Bird, or what was
19 his position as of September 2014?

20 A. He was our task force counterpart at
21 the Office of Management & Budget, OMB, so OMB has
22 different task forces that oversee the various
23 agencies in the city, and Joe Bird was the task
24 force leader at OMB that oversaw the Fire
25 Department, so we dealt with him all the time on

1 S. Rush

2 numerous issues.

3 Q. So I want to focus, given time
4 constraints, just on the last sentence of the main
5 paragraph of this email, that says, "Recruitment
6 is in fact trying, but check out FPI requirements
7 and pay start at 36,428. Is the city serious?"

8 What did you mean by, "Check Out FPI
9 requirements and pay, start at 36428, is the city
10 serious?"

11 A. I think in looking at the requirements
12 -- and I can't recall looking at them, but I must
13 have looked at them -- that it seemed to me they
14 were for a pay -- pay level of \$36,000, they
15 seemed overly ambitious.

16 Q. That it was going to -- it was hard to
17 recruit people to fill the positions when the
18 starting salary was 36428?

19 A. Given what the -- I'm sorry.

20 Given what the city's qualifications
21 were, it appeared that that salary appeared low,
22 given the qualifications of the job. That's why I
23 said check out their -- the FPI requirements to be
24 hired, so they seemed overly difficult
25 requirements for a pay of 36,000.

1 S. Rush

2 Q. And were you looking at other jobs and
3 their starting salary and their requirements in
4 order to come up with the opinion that the 36,428
5 was low?

6 A. No, but, I mean, I think at this point
7 I was just looking at the fire protection
8 inspector requirements and saying, you know, they
9 seem like they're asking for a lot for a pay that
10 starts with \$36,000.

11 That's just a lay person's review. I
12 don't do job requirements, so I have no real
13 expertise, but it just seemed that there were
14 unduly higher requirements for the job, which I
15 think were later changed.

16 Q. If the job had been designated as hard
17 to recruit, would it have been easier to increase
18 the starting salary?

19 A. Perhaps. I'm not sure. I really --
20 I'm not sure how the mechanics of that work.

21 Q. Do you know -- we looked back at 2004
22 and '5 and referenced hard to fill, hard to
23 recruit.

24 Do you know, was there any effort
25 between 2005 and 2014 to designate the fire

1 S. Rush

2 discussions started to happen independently of my
3 office with fire prevention.

4 Q. So at this point, you have been
5 involved in discussions with human resources, with
6 OMB -- and when I say you, it's you or Mr.
7 Novello -- with the Bureau of Fire Prevention, and
8 to some extent with OLR all about these issues,
9 and other than in the labor negotiations that
10 you've already talked about, are you aware of any
11 efforts that came out to increase the salaries of
12 the fire protection inspectors?

13 A. No.

14 MR. LIEDER: Could we now turn to
15 Exhibit 6.

16 Q. This is a chain of emails that starts
17 between you and Fred Novello, and also that
18 includes Mario Manna, that you had mentioned
19 earlier.

20 I want to go down to the start with
21 the first email in the chain, but why don't you
22 review the chain and let me know when you're
23 ready.

24 A. Okay.

25 Q. You'll see that Mr. Novello starts off

1 S. Rush

2 hiring since the 2018 hiring of the class of 50
3 candidates?

4 A. I do not believe -- you know, I don't
5 know what happened since I've left, but there was
6 because -- first of all, we were over the quota
7 that we needed. I don't believe there was many
8 hiring, and then the COVID shut down basically
9 everything, so I assume things are picking up now,
10 but I can't -- you know, I'm no longer there.

11 Just to be sure, I don't remember
12 hiring post that time. More to do with COVID and
13 the budget situation than anything else.

14 Q. I'm already two minutes over, so I'm
15 going to just ignore most of the summary questions
16 I was planning to ask you. I want to ask this one
17 summary question.

18 We've seen various emails where you
19 were thinking that what needed to be done, or one
20 of the things that needed to be done, was
21 increasing the salary of new hires for fire
22 protection inspectors.

23 Was there any other job title within
24 the Fire Department of New York that you thought
25 salaries should be increased across the board as

1 S. Rush

2 you are -- for all new hires as you did with fire
3 protection inspectors?

4 MS. CROUSHORE: Objection.

5 THE WITNESS: Can I answer?

6 MS. CROUSHORE: Yes, you can answer.

7 A. I mean, we've had many discussions
8 over the years about EMS and their starting pay,
9 and that's right now going on, and we've been
10 having the discussions as part of contract
11 negotiations for the better part of -- from 2020,
12 and it's still ongoing, so I think EMS would be
13 the other area, I would say.

14 MR. LIEDER: You've been very helpful,
15 Mr. Rush. I have no other questions.

16 MS. CROUSHORE: I have no questions.

17 I'd like to order the transcript.

18 MR. LIEDER: And plaintiffs would like
19 the order the transcript, and I think we

20 (Continued on next page.)

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